

## FACT SHEET FOR NDPDES PERMIT NDR32-0000

### GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MINING, EXTRACTION OR PAVING MATERIAL PREPARATION ACTIVITIES

DATE OF THIS FACT SHEET – SEPTEMBER 2014

#### INTRODUCTION

The Federal Clean Water Act (FCWA, 1972, and later amendments in 1977, 1981, and 1987, etc.) established water quality goals for the navigable (surface) waters of the United States. One mechanism for achieving the goals of the Clean Water Act is the National Pollutant Discharge Elimination System (NPDES), by which the federal Environmental Protection Agency (EPA) has oversight authority. In 1975 the State of North Dakota was delegated primacy of the NPDES program by EPA. Our state governor accepted the delegation and the state legislature assigned the power and duty for conducting NPDES permitting and enforcement to the North Dakota Department of Health (NDDH). The legislature defined North Dakota Department of Health's authority and obligations for the wastewater discharge permit program in NDAC 33-16 (North Dakota Administrative Code), which was promulgated pursuant to NDCC chapter 61-28 (North Dakota Century Code). NDDH uses North Dakota Pollutant Discharge Elimination System (NDPDES) as its permitting title.

The following regulations apply to NDPDES permits:

- Procedures NDDH follows for issuing NDPDES permits (NDAC chapter 33-16-01),
- Water quality criteria for waters of the state (NDAC chapter 33-16-02.1).

These rules require any treatment facility operator to obtain an NDPDES permit before discharging wastewater to state waters. They also define the basis for limits on each discharge and for other requirements imposed by the permit.

According to the North Dakota Administrative Code (NDAC) section 33-16-01-08 the NDPDES permit program NDDH must prepare a draft permit and accompanying fact sheet, and make it available for public review. NDDH must also publish an announcement (public notice) telling people where they can obtain the draft permit, and where to send their comments on the draft permit, during a period of thirty days (NDAC chapter 33-16-01-07). For more details on preparing and filing comments about these documents, please see **Appendix A – Public Involvement**. After the Public Comment Period ends, NDDH may make changes to the draft NDPDES permit. NDDH will summarize the responses to comments and any changes to the permit in **Appendix D – Response to Comments**.

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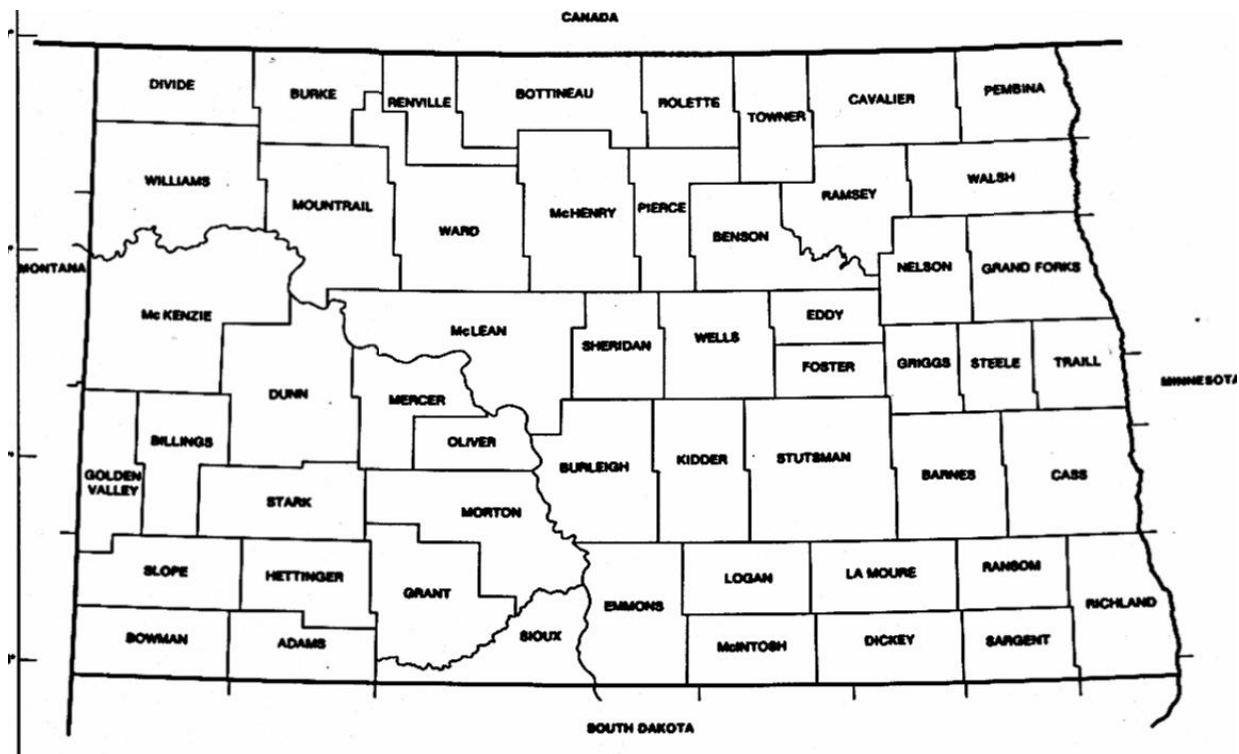
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## BACKGROUND INFORMATION

### General Information

Permit Number:	NDR32-0000
Permit Type:	General Permit, Renewal
Type of Treatment:	Best Available Technology Economically Achievable (BAT); Best Professional Judgment (BPJ); and Best Management Practices (BMPs)
Discharge Location:	Waters of the State of North Dakota

Figure 1 – Map of counties of the State of North Dakota



General permits provide a streamline means to cover a large number of facilities that are subject to the regulations' broad definition of "stormwater discharges associated with industrial activity." These facilities are subject to the requirements of Section 402 of the Clean Water Act, as enforced by the NDPDES permitting program. In addition, the general permit process places less of an administrative burden on the issuing authority than the individual permitting process. The general permits require baseline control practices aimed at minimizing the impact of stormwater discharges on waters of the state. Individual permits or industry specific permits may be developed to address specific water quality concerns or industry specific control practices.

The present general permit issued for stormwater discharges associated with mining, extraction, or paving material preparation activities expired June 30, 2014. It is currently under administrative extension until the proposed general permit is reissued. The permit was developed in response to the stormwater permit application requirements promulgated by the U.S. Environmental Protection Agency on November 16, 1990. The renewal will continue to provide coverage for stormwater discharges from mining, extraction, or paving material preparation facilities statewide. Currently, there are approximately 230 facilities covered by the present permit for mining, extraction or paving material preparation activities.

### **SIGNIFICANT PERMIT CHANGES**

The following additions or changes to this general permit were made:

- SWPPPs are no longer required to be submitted as part of the application.
- SWPPP requirements were added such as map requirements, a pollution prevention team, employee training specifications, and sampling.
- Increased inspection frequency.
- Terms and conditions such as minimizing exposure, locating materials, and spill cleanup methods.
- Stormwater sampling based on SIC code
- Effluent limitations
- Removal of Annual Inspection Report requirement
- Discharge Monitoring Report requirements

### **COVERAGE UNDER THIS PERMIT**

#### **Applicability of General Permit**

Under this general permit, authorization to discharge relatively uncontaminated stormwater from industrial activities into the waters of the state of North Dakota may be granted. This permit is for stormwater discharges associated with most mining, extraction or paving material preparation activities. The permit is not intended for discharges from other industrial activities or construction disturbances. These activities will be covered under separate general permits, NDR05-0000 for Industrial activity and NDR10-0000 for Construction activity. This permit applies to discharges composed (either in whole or in part) of stormwater associated with industrial activity as defined in Title 40 of the Code of Federal Regulations (CFR), Part 122.26(b)(14), as published July 1, 2002, from any part of the following:

- Operations involved in mining or extracting activities, including processes to prepare materials for use, Standard Industrial Classification (SIC) Codes 12 through 14.
- Facilities operated to obtain or prepare materials for highway construction activities including concrete or asphalt batch plants, SIC Codes 1611, 2951 and some 327.
- Equipment storage and maintenance yards supporting the industrial categories identified above.

### **Discharges Not Covered**

There are other types of discharges which also may not be appropriately regulated through this permit and other limitations on what activities this permit can authorize. As such, the following discharges are not eligible for coverage under this permit:

- Stormwater discharges subject to a nationally established effluent limitations guideline or other performance standard under 40 CFR subchapter N.
- Discharges or releases of process wastewaters or other non-stormwater discharges except those authorized under Part II(A) of the general permit.
- Discharges to waters for which there is a total maximum daily load (TMDL) allocation for sediment and/or parameters associated with sediment transport are not covered unless you develop a Stormwater Pollution Prevention (SWPP) plan that is consistent with the assumptions and requirements in the approved TMDL. To be eligible for coverage under this general permit, the SWPP plan must incorporate the conditions applicable to the discharge necessary for consistency with the assumptions, allocations and requirements of the TMDL. If a specific numeric wasteload allocation has been established that would apply to the facility's discharge, the permittee must incorporate that allocation into the SWPP plan and implement necessary steps to meet that allocation.
- The placement of fill into waters of the state requiring local, state, or federal authorizations (such as U.S. Army Corps of Engineers Section 404 permits).
- This permit does not substitute for obligations under the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), or National Historic Preservation Act (NHPA). It is your responsibility to ensure the project and resulting discharges comply with the respective requirements.
- Stormwater discharges that the department determines will cause, or have the reasonable potential to cause or contribute to, violations of water quality standards.

### **Request for Authorization**

Facilities covered under the present permit shall be retained, provided a satisfactory request was made under the renotification provisions of the permit. If deemed necessary, the department may require the submittal of a new Notice of Intent. For operators of new facilities wishing to obtain coverage, an application must be submitted at least 7 days prior to starting any activity subject to regulation as a stormwater discharge associated with mining, extraction or paving material preparation activity. Permit coverage will become effective 7 days after submittal of a complete application unless otherwise notified by the department (based on the department receipt date).

The application (or also referred to as Notice of Intent) shall contain, at a minimum, the following information:

- Name and mailing address of the owner or operator
- Owner/operator contact name and phone number
- Name of facility or site
- A brief description of the nature of business or activity
- Standard Industrial Classification (SIC) Code
- Acreage of the facility dedicated to industrial activity
- Location of the site(s), including the county, latitude and longitude or township, range, section, and 1/4 section
- Name of receiving water(s) or the name of the receiving municipal storm sewer system and receiving water(s)
- The signature of the applicant(s), signed in accordance with Signatory Requirements of the permit

Local agencies may operate a local stormwater management program and impose local requirements. The local authority may require that a copy of the application be provided to them for review and approval.

The department will accept applications from facilities after the specified dates, or from existing facilities that were required to apply prior to the issuance of this permit. In such cases, the department may take appropriate enforcement action. Individuals who willingly fail to provide this notification, and subsequently discharge pollutants to the waters of the state without an NDPDES permit, shall be in violation of federal and state rules and regulations.

### **Alternative Permit Coverage and Notice of Termination**

The department, by written notification only, may require any person authorized by this permit to apply for and either obtain an individual NDPDES permit or seek coverage under an alternative NDPDES general permit. Any person covered by this general permit may request to be excluded from such coverage by either applying for an individual NDPDES permit, or filing a Notice of Intent to be covered under an alternative NDPDES general permit.

When an individual NDPDES permit is issued to a person otherwise subject to this permit or the person is approved for coverage under an alternative NDPDES general permit, the applicability of this permit to the individual permittee is automatically terminated upon the effective date of the individual permit or the date of approval for coverage under the alternative general permit.

### **Termination of Coverage**

A permittee may request the termination of permit coverage when stormwater discharges associated with industrial activity are no longer present at the facility. The request must be

made, in writing, to the department. Depending on the reason for discontinuing coverage, the request must consist of either of the following:

- All stormwater discharges associated with industrial activity have been eliminated and final stabilization (see definitions) has been achieved on all portions of the site for which the permittee is responsible.
- The discharges were from an inactive coal mining operation no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate Surface Mining Control and Reclamation Act (SMCRA) authority has been released; or a non-coal mining operation which has been released from applicable state or federal reclamation requirements after December 17, 1990.
- The discharges were from an oil or gas extraction facility where the areas affected by a reportable quantity release that resulted in coverage under this permit have been reclaimed and the facility has operated satisfactorily under a stormwater pollution prevention plan for a minimum of three years.
- A new owner or operator has assumed responsibility over all stormwater discharges associated with industrial activity at the facility, in accordance with the Transfer provisions (Part IV(B)(3)) of this permit.
- The facility has been issued an individual NDPDES permit to discharge stormwater associated with industrial activity.

### **Special Conditions**

As this is a general permit for stormwater discharges, it must be identified that certain discharges are prohibited for coverage under this permit. Should process wastewaters or other non-stormwater sources be combined with the stormwater discharge, the non-stormwater source must be in compliance with an appropriate NDPDES permit specifically for the non-stormwater discharge. The department will on a case-by-case basis consider allowing certain non-stormwater discharges to be operated under the conditions of this permit. Non-stormwater discharges that may be considered for coverage under this permit would be limited to those identified or sufficiently similar to those identified, in similar EPA's general permits. Such discharges include, but not limited to, fire hydrant flushing, potable water line flushings, infrequent building washdowns if detergents or other compounds are not used, or uncontaminated foundation drains. Pavement wash water may not be directed into any surface water or storm drain inlet unless appropriate control measures have been implemented to prevent pollution above standards of quality for waters of the state.

This permit will not relieve the permittee of reporting requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302 nor the reporting requirements found in Chapter 33-16-02.1 of the North Dakota Administrative Code. 40 CFR 117 and 40 CFR 302 identify reportable quantities for the release of hazardous substances. There is a remote possibility that hazardous substances in

excess of reporting quantities may enter stormwater discharges regulated by this permit. Since these hazardous substance discharges are not authorized by this permit, the reporting requirement exemption in 40 CFR 117.12 would not apply, and all specified reporting requirements would remain in effect. Of a more probable nature is the possibility of oil in excess of the mandated reporting quantity entering a stormwater discharge. As an oil spill release is not authorized by this permit, the discharger would not be relieved of the reporting obligations, which in this case are identified in 40 CFR 110. In addition, the requirements of Section 311 of the Clean Water Act, and any applicable provisions of Section 301 and 402 of the Clean Water Act would also apply.

## **STORMWATER POLLUTION PREVENTION PLAN**

All facilities covered by this general permit are required to prepare, implement, and maintain a Stormwater Pollution Prevention (SWPP) plan. The major objectives of the plan are to identify potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges and ensure that practices are implemented to minimize pollutants in stormwater discharges.

Some facilities covered by this permit may be subject to local or state sediment and erosion control programs or stormwater management related requirements as part of other regulatory programs. In particular, spill prevention control and counter measure (SPCC) plans have been developed for many facilities. In most cases, it will be acceptable to incorporate by reference the applicable portions or requirements of plans developed under other regulatory programs into the SWPP plan.

The SWPP plans developed and approved under the current permit may be continued under the proposed permit. The facilities with existing plans are responsible for updating their SWPP plans accordingly within 180 days of the issuance of the proposed permit.

The SWPP plan requirements reflect a combination of controls measures and BMPs outlined in the EPA Draft Multi-Sector General Permit (MSGP-2013) published in the Federal Register on September 27, 2013 pertinent to the industrial activities covered by this permit. The required SWPP plan items in the proposed permit shall be similar to those in the past versions of the permit. At a minimum, the SWPP plan must include the following:

- 1. Site Description**
- 2. Stormwater Pollution Prevention Team**
- 3. Description of Potential Pollutant Sources**
- 4. Stormwater Controls**
- 5. Maintenance**
- 6. Inspections**
- 7. Sampling**
- 8. Plan Review and Revisions**

## **Additional Terms and Conditions**

The proposed permit includes additional terms and conditions regarding material management.



## **Authorization to Discharge**

Coverage under this permit does not convey approval to discharge to any ditch, storm sewer, private property, or other method of routing the effluent from the site of discharge to the waters of the state. It shall be the permittee's responsibility to seek, apply for and obtain any additional authorizations necessary to initiate the discharge proposed in the permittee's application. If the process of obtaining all the authorizations necessary to initiate the discharge results in changes to the permittee's application, the permittee shall modify in writing the application for an NDPDES permit. The permittee is not authorized to discharge wastewater other than the type and at the location specified in the application.

## **PROPOSED PERMIT LIMITS**

### **Effluent Limitations**

The permit will not take the place of any promulgated effluent limitation guidelines applicable to any discharge. These discharges must be covered by another NDPDES permit. The department will conduct site inspections to ensure that proper BMPs and controls are implemented to prevent stormwater discharges from adversely impacting waters of the state. The effluent limitations included in the permit are identified below:

- The quality of stormwater discharges associated with industrial activity shall reflect the best which is attainable through the proper implementation of all items in the SWPP plan for the facility.
- Discharges from asphalt emulsion facilities shall not exceed a daily maximum concentration of 23.0 milligrams per liter (mg/L) or a monthly average concentration of 15.0 mg/L for total suspended solids (TSS). The pH shall remain within the range of 6.0 to 9.0 standard units (S.U.). Oil and grease concentrations shall not exceed a daily maximum concentration of 15.0 mg/L or a monthly average concentration of 10 mg/L.
- Discharges from material storage piles at cement manufacturing facilities shall not exceed a daily maximum concentration of 50 mg/L for TSS. The pH shall remain within the range of 6.0 to 9.0 S.U.
- Discharges from mine dewatering at crushed stone mining facilities, construction sand and gravel mining facilities, and industrial sand mining facilities (SIC 1422-1429, 1442, 1446) shall have a pH within the range of 6.0 to 9.0 S.U. Mine dewatering discharges from industrial sand mining facilities shall not exceed a daily maximum concentration of 45 mg/L or a monthly average concentration of 25 mg/L for TSS.

### **Benchmark Concentrations**

Benchmark concentrations should not be interpreted as stormwater effluent limitations, individual wastewater effluent limitations, or as state water quality standards. Benchmark concentrations provide an appropriate level to determine whether a facility's stormwater pollution prevention measures are effective. A pollutant concentration that is above the benchmark value represents a potential water quality concern and the need to improve a facility's SWPP plan.

**Stormwater Sampling**

The permit identifies several industry types that must conduct stormwater sampling. The industries and sample parameters reflect the conditions of the EPA Draft Multi-Sector General Permit (MSGP-2013). The specific monitoring conditions and parameter list for each facility group is outlined in Appendices 2 and 3 of the permit. The sampling requirements by industry are provided below.

**Asphalt Paving and Roofing Materials**

Applicability: Facilities with asphalt paving and roofing materials, SIC code 2951		
Required Parameter	Benchmark Value	Discharge Limit
• Total Suspended Solids	100 mg/L	

**Asphalt Emulsion Facilities**

Applicability:		
Required Parameter	Benchmark Value	Discharge Limit
• Total Suspended Solids		23.0 mg/L (daily max) 15.0 mg/L (monthly avg)
• pH		Between 6.0-9.0 S.U.
• Oil and Grease		10 mg/L (monthly avg)

**Glass, Clay, Cement Concrete, and Gypsum Products**

Applicability: Facilities with industrial activities associated with Cement, Concrete, and Gypsum Product manufacturing facilities SIC code 3271-3275		
Required Parameter	Benchmark Value	Discharge Limit
• Total Suspended Solids	100 mg/L	
• Iron, Total	1.0 mg/L	
<p><i>Good Housekeeping Measures.</i> Using good housekeeping measures, prevent or minimize the discharge of spilled cement, aggregate (including sand or gravel), kiln dust, fly ash, settled dust, or other significant material in stormwater from paved portions of the site that are exposed to stormwater.</p> <p>Determine the frequency based on the amount of industrial activity occurring in the area and the frequency of precipitation, but it must be performed at least once a week if cement, aggregate, kiln dust, fly ash, or settled dust are being handled or processed.</p> <p>You must also prevent the exposure of fine granular solids (cement, fly ash, kiln dust, etc.) to stormwater, where practicable, by storing these materials in enclosed silos, hoppers, or buildings, or under other covering.</p>		

### Cement Manufacturing

Applicability: Discharges from material storage piles at cement manufacturing facilities		
<u>Required Parameter</u>	<u>Benchmark Value</u>	<u>Discharge Limit</u>
• Total Suspended Solids		50 mg/L (daily max)
• pH		Between 6.0-9.0 S.U.

### Mine Dewatering

Applicability: Mine dewatering at crushed stone mining facilities, constructions sand and gravel mining facilities, and industrial sand mining facilities (SIC 1422-1429, 1442, 1446)		
<u>Required Parameter</u>	<u>Benchmark Value</u>	<u>Discharge Limit</u>
• pH		Between 6.0-9.0 S.U.

Applicability: Mine dewatering discharges from industrial sand mining facilities		
<u>Required Parameter</u>	<u>Benchmark Value</u>	<u>Discharge Limit</u>
• Total Suspended Solids		45 mg/L (daily max) 25 mg/L (monthly avg)

### Coal Mines and Coal Mining Related Facilities

Applicability: Stormwater discharges associated with industrial activity from Coal Mines and Coal Mining-Related facilities as identified by the SIC Codes 1221-1241		
<u>Required Parameter</u>	<u>Benchmark Value</u>	<u>Discharge Limit</u>
• Total Suspended Solids	100 mg/L	
• Iron, Total	1.0 mg/L	
• Aluminum, Total	0.75 mg/L	
<b>Additional SWPPP Requirements</b> <i>Other Applicable Regulations.</i> All active coal mining-related areas (SIC Codes 1221-1241) are subject to sediment and erosion control regulations of the Public Service Commission (PSC) that enforces the Surface Mining Control and Reclamation Act (SMCRA). OSM has granted authority to most coal-producing states to implement SMCRA through State SMCRA regulations. All SMCRA requirements regarding control of stormwater-related pollutant discharges must be addressed and then documented with the SWPPP (directly or by reference).		

### Oil and Gas Extraction SIC 1311, 1321, 1381-1389

Applicability:		
<u>Required Parameter</u>	<u>Benchmark Value</u>	<u>Discharge Limit</u>
• Chlorides, Total		250 mg/L
• pH		Between 6.0-9.0 S.U.
• Benzene		5 ug/L
• Total BTEX		100 ug/L
• TPH		1 mg/L (to domestic water supply) 10 mg/L (to other waters)
• Oil and Grease		10 mg/L (if a visible sheen is present)
<b>Guide for Dewatering Uncontaminated Stormwater and Melt Water from Oil Well Pads and Secondary Containment Structures</b> <ol style="list-style-type: none"> <li>The following steps should be taken to initiate the discharge of uncontaminated stormwater or melt water: <ul style="list-style-type: none"> <li>Test results show the water meets the parameters outlined above</li> <li>Dewatering may occur from areas where a spill occurred (e.g., oil or produced water) that was remediated and meets the parameters outlined above</li> <li>Dewatering may not occur in areas where a spill has not been remediated</li> <li>The water to be discharged must not have come in contact with reserve pits, drilling fluid, drilling mud, crude oil, produced water, hydrofracturing fluid, hydrofracturing flowback water, or other possible contaminants</li> </ul> </li> <li>Contact the land owner or neighbors to inform them that you will be dewatering stormwater or melt water. For an oil well pad, contact the North Dakota Industrial Commission, Oil and Gas Division for any additional requirements.</li> <li>If the water cannot be discharged, then the following disposal options may be available; note that landfills and city sanitary sewer systems will not accept liquid waste: <ul style="list-style-type: none"> <li>Disposal at a class II injection well (or salt water disposal well)</li> <li>Hydraulic fracturing</li> <li>Contact a reputable disposal company</li> </ul> </li> </ol>		

### Non-Metallic Mineral Mining and Dressing

Applicability: Sand and Gravel Mining SIC 1442, 1446		
<u>Required Parameter</u>	<u>Benchmark Value</u>	<u>Discharge Limit</u>
• Nitrate plus Nitrite Nitrogen	0.68 mg/L	
• Total Suspended Solids	100 mg/L	

Applicability: Dimension and Crushed Stone and Nonmetallic Minerals (except fuels) (SIC 1411, 1422-1429, 1481, 1499)		
<u>Required Parameter</u>	<u>Benchmark Value</u>	<u>Discharge Limit</u>
• Total Suspended Solids	100 mg/L	

There may be instances where the department may find it necessary to conduct sampling to evaluate the effectiveness of BMPs and other water quality concerns. As such, provisions for sampling stormwater discharges are included in the proposed permit. Conditions that may require sampling include but are not limited to the following:

- Facilities where additional analytical data is needed to estimate the potential impact of stormwater discharges on water quality. Examples of where additional data may be needed include: water quality improvement projects such as Section 319 Nonpoint Sources, Total Maximum Daily Load (TMDL) development, or lake restoration projects.
- Facilities where monitoring sample results indicate discharges are generally of a poor quality or have significantly higher pollutant concentrations relative to the results of similar industrial categories.
- Facilities where the SWPP plan is delinquent, not properly implemented, or determined to be inaccurate.

### **Annual and Discharge Monitoring Report Requirements**

Other than those required to sample, only portable or temporary facilities covered by this permit are required to submit annual location record reports to the department on a routine basis.

Facilities that are required to conduct sampling under this permit must submit an annual discharge monitoring report. The report shall summarize monitoring results obtained during the report period. If no discharge occurs during a reporting period, "no discharge" shall be reported. Monitoring reports of a sampling period shall be required from all facilities that are covered by this permit for any portion of that reporting period. For all facilities, the monitoring reports shall cover a period from January 1 to December 31 and be submitted to the department by January 31 the following year.

### **Self-Monitoring Requirements**

All facilities covered by this permit are required to conduct comprehensive site inspections according to the schedule below:

- Active facilities shall be inspected at least once (1) during a three (3) month period. The 3 month periods shall consist of the first quarter of the year (January – March), the second quarter of the year (April – June), the third quarter of the year (July – September) and the fourth quarter of the year (October – December).
- Operators of temporary or portable facilities (sand and gravel, batch plants) shall conduct inspections on a monthly basis while the operation is active and once every 3 months until final stabilization is achieved after ceasing operations.
- Inactive operations shall be evaluated annually, at a minimum, by a qualified individual with experience in surface water pollution issues (i.e., environmental, erosion control, reclamation or engineering). The objectives of such evaluations are to: 1) assess the

stability and performance of existing runoff controls, and 2) identify areas adversely impacted by runoff from the site.

- Increased frequency may be appropriate for some types of equipment, processes and stormwater control measures, or areas of the facility with significant activities and materials exposed to stormwater.
- At least two of the routine inspections required in Part III(A) must be conducted when a stormwater discharge is occurring. Inspections should be conducted within 48 hours or as soon as conditions allow following storm events of one-half (0.5) inch or more in 24 hours with at least one inspection during a 3 month period when no such events occur.

The areas below will be inspected for evidence of, or the potential for, pollutants entering the drainage system:

- Areas where industrial materials or activities are exposed to stormwater;
- Areas identified in the SWPPP that are potential pollutant sources;
- Areas where spills and leaks have occurred in the past 3 years;
- Discharge points;
- Control measures used to comply with this permit; and
- Disturbed areas of the site that have not reached final stabilization.

During an inspection a permittee must look for the following:

- Industrial materials, residue or trash that may have or could come into contact with stormwater;
- Leaks or spills;
- Offsite tracking of industrial or waste materials;
- Offsite tracking of sediment; and
- Control measures needing replacement, maintenance or repair.

The permittees must ensure that personnel conducting inspections are familiar with permit conditions, the SWPP plan, and the proper installation and operation of control measures.

Inspection records will summarize the scope of the inspection, major observations related to the SWPP plan and any corrective actions. At a minimum inspection records will include:

- The date and time of inspections;
- Name of person(s) conducting the inspection;
- Signs of pollution or the potential for pollution from industrial activities;
- Inspection findings, including major observations relating to the SWPP plan, condition of stormwater controls, deficiencies noted and recommendations for corrective actions;
- Corrective actions taken including dates, times, and party completing maintenance activities); and
- Documentation that the SWPP plan has been amended when substantial changes are made to stormwater controls or other BMPs in response to inspections.

Inspectors must consider the results of previous visual and analytical monitoring when planning and conducting inspections.

## **SURFACE WATER QUALITY-BASED EFFLUENT LIMITS**

The North Dakota State Water Quality Standards (NDAC Chapter 33-16-02.1) are designed to protect existing water quality and preserve the beneficial uses of North Dakota's surface waters. Wastewater discharge permits must include conditions that ensure the discharge will meet the surface water quality standards. Water quality-based effluent limits may be based on an individual waste load allocation or on a waste load allocation developed during a basin wide total maximum daily load (TMDL) study. TMDLs result from a scientific study of the water body and are developed in order to reduce pollution from all sources.

### **Numerical Criteria for the Protection of Aquatic Life and Recreation**

Numerical water quality criteria are listed in the water quality standards for surface waters (NDAC Chapter 33-16-02.1). They specify the maximum levels of pollutants allowed in receiving water to protect aquatic life and recreation in and on the water. The department uses numerical criteria along with chemical and physical data for the wastewater and receiving water to derive the effluent limits in the discharge permit. When surface water quality-based limits are more stringent or potentially more stringent than technology-based limits, the discharge must meet the water quality-based limits.

### **Numerical Criteria for the Protection of Human Health**

The U.S. EPA has published numeric water quality criteria for the protection of human health that are applicable to dischargers. These criteria are designed to protect humans from exposure to pollutants linked to cancer and other diseases, based on consuming fish and shellfish and drinking contaminated surface waters. The Water Quality Standards also include radionuclide criteria to protect humans from the effects of radioactive substances.

### **Narrative Criteria**

Narrative water quality criteria (NDAC Chapter 33-16-02.1-08) limit concentrations of pollutants from exceeding applicable standards of the receiving waters. The department adopted a narrative biological goal solely to provide an additional assessment method that can be used to identify impaired surface waters.

### **Antidegradation**

The purpose of North Dakota's Antidegradation Policy (NDAC Chapter 33-16-02(Appendix IV)) is to:

- Provide all waters of the state one of three levels of antidegradation protection.
- Determine whether authorizing the proposed regulated activity is consistent with antidegradation requirements.

The department's fact sheet demonstrates that the existing and designated uses of the receiving water will be protected under the conditions of the proposed permit.

## **Mixing Zones**

The department's WQS contain a Mixing Zone and Dilution Policy and Implementation Procedure, NDAC Chapter 33-16-02.1 (Appendix III). This policy addresses how mixing and dilution of point source discharges with receiving waters will be addressed in developing chemical-specific and whole effluent toxicity discharge limitations for point source discharges. Depending upon site-specific mixing patterns and environmental concerns, some pollutants/criteria may be allowed a mixing zone or dilution while others may not. In all cases, mixing zone and dilution allowances shall be limited, as necessary, to protect the integrity of the receiving water's ecosystem and designated uses.

## **EVALUATION OF SURFACE WATER QUALITY-BASED EFFLUENT LIMITS FOR NUMERIC CRITERIA**

The effluent limitation and benchmark concentrations in the permit reflect the conditions of the EPA Draft Multi-Sector General Permit (MSGP-2013). Water quality based limits may be imposed on discharges covered by this permit through the implementation of a TMDL allocation. In addition, a facility covered by this permit may be required to obtain an individual permit based on site specific water quality based limitations.

## **MONITORING REQUIREMENTS**

The department requires monitoring, recording, and reporting (NDAC Chapter 33-16-01-(21 through 23) and 40 CFR 122.41) to verify that the treatment process is functioning correctly and that the discharge complies with the permit's limits.

## **Test Procedures**

The collection and transportation of all samples shall conform to EPA preservation techniques and holding times found in 40 CFR 136. All laboratory tests shall be performed by a North Dakota certified laboratory in conformance with test procedures pursuant to 40 CFR 136, unless other test procedures have been specified or approved by EPA as an alternate test procedure under 40 CFR 136.5. The method of determining the total amount of water discharged shall provide results within 10 percent of the actual amount.

## **PERMIT ISSUANCE PROCEDURES**

### **Permit Actions**

This permit may be modified, revoked and reissued, or terminated for cause. This includes the establishment of limitations or prohibitions based on changes to Water Quality Standards, the development and approval of waste load allocation plans, the development or revision to water quality management plans, changes in sewage sludge practices, or the establishment of prohibitions or more stringent limitations for toxic or conventional pollutants and/or sewage sludges. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.



### **Proposed Permit Issuance**

This proposed permit meets all statutory requirements for the department to authorize a wastewater discharge. The permit includes limits and conditions to protect human health and aquatic life, and the beneficial uses of waters of the State of North Dakota. The department proposes to issue this permit for a term of five (5) years.

Any request to retain coverage under a renewal of this permit shall be made in writing to the department at least 15 days prior to the expiration date of this permit. Typically the department provides permit holders with renewal or renotification instructions when a new permit has been drafted. Upon request by the department, a new Notice of Intent shall be submitted.

## **APPENDIX A – PUBLIC INVOLVEMENT INFORMATION**

The department proposes to reissue a general permit for stormwater discharges associated with mining, extraction, or paving material preparation activity. The permit includes the use of best management practices, the development of a stormwater pollution prevention plan, monitoring requirements and other conditions. This fact sheet describes the type of facilities covered under the permit and the department's reasons for requiring permit conditions.

The department will place a 30-day Public Notice on **October 6, 2014** in the **Bismarck Tribune**, the official newspaper of the capital city, and in **Regional Papers** throughout the state to inform the public and to invite comment on the proposed draft North Dakota Pollutant Discharge Elimination System permit and fact sheet. The notice will also be mailed to the department's Public Notice mailing list.

The Notice –

- Indicates where copies of the draft Permit and Fact Sheet are available for public evaluation.
- Offers to provide assistance to accommodate special needs.
- Urges individuals to submit their comments before the end of the comment period.
- Informs the public that if there is significant interest, a public hearing will be scheduled.

You may obtain further information from the department by telephone, 701.328.5210 or by writing to the address listed below.

North Dakota Department of Health  
Division of Water Quality  
918 East Divide Avenue, 4th Floor  
Bismarck, ND 58501

The authors of the general permit are Luci Snowden and Dallas Grossman. The author of this fact sheet is Luci Snowden.

**North Dakota Department of Health Public Notice  
Issue of an NDPDES Permit**

Public Notice Date: 10/6/2014

Public Notice Number: ND-2014-002

**Purpose of Public Notice**

The Department intends to issue the following North Dakota Pollutant Discharge Elimination System (NDPDES) Discharge Permit under the authority of Section 61-28-04 of the North Dakota Century Code.

**Permit Information**

Application Date: 1/1/2014

Application Number: NDR32

Applicant Name: Stormwater from Mining, Extraction & Paving Material Preparation Industries

Mailing Address: ND Dept of Health, Div of Water Quality, 918 East Divide Ave, Bismarck ND 58501-1947

Telephone Number: 701.328.5239

Proposed Permit Expiration Date: 6/30/2019

**Description**

The general Permit applies to mining, extraction and paving facilities in North Dakota. The general permit regulates stormwater discharges from gravel mining and other mineral mining operations, oil and gas extraction facilities, and concrete or asphalt batch plants. The permit requires the implementation of a pollution prevention plan to reduce stormwater pollution. The permit includes discharge limits based on prohibitions, Best Management Practices, water quality standards, and other considerations applicable to the activities.

**Tentative Determinations**

Proposed effluent limitations and other permit conditions have been made by the Department. They assure that State Water Quality Standards and applicable provisions of the FWPCAA will be protected.

**Information Requests and Public Comments**

Copies of the application, draft permit, and related documents are available for review. Comments or requests should be directed to the ND Dept of Health, Div of Water Quality, 918 East Divide Ave, Bismarck ND 58501-1947 or by calling 701.328.5210.

All comments received by November 03, 2014 will be considered prior to finalizing the permit. If there is significant interest, a public hearing will be scheduled. Otherwise, the Department will issue the final permit within sixty (60) days of this notice. If you require special facilities or assistance relating to a disability, call TDD at 1.800.366.6868.

## **APPENDIX B – GLOSSARY**

### **A. Standard Permit Definitions BP 2013.12.31**

1. **“Act”** means the Clean Water Act.
2. **“Average monthly discharge limitation”** means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.
3. **“Average weekly discharge limitation”** means the highest allowable average of “daily discharges” over a calendar week, calculated as the sum of all “daily discharges” measured during a calendar week divided by the number of “daily discharges” measured during that week.
4. **“Best management practices”** (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.
5. **“Bypass”** means the intentional diversion of waste streams from any portion of a treatment facility.
6. **“Composite”** sample means a combination of at least 4 discrete sample aliquots, collected over periodic intervals from the same location, during the operating hours of a facility not to exceed a 24 hour period. The sample aliquots must be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.
7. **“Daily discharge”** means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the “daily discharge” is calculated as the average measurement of the pollutant over the day.
8. **“department”** means the North Dakota Department of Health, Division of Water Quality.
9. **“DMR”** means discharge monitoring report.
10. **“EPA”** means the United States Environmental Protection Agency.

11. **“Geometric mean”** means the  $n^{\text{th}}$  root of a product of  $n$  factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.
12. **“Grab”** for monitoring requirements, means a single "dip and take" sample collected at a representative point in the discharge stream.
13. **“Instantaneous”** for monitoring requirements, means a single reading, observation, or measurement. If more than one sample is taken during any calendar day, each result obtained shall be considered.
14. **“Maximum daily discharge limitation”** means the highest allowable “daily discharge.”
15. **“Salmonid”** means of, belonging to, or characteristic of the family Salmonidae, which includes the salmon, trout, and whitefish.
16. **“Sanitary Sewer Overflows (SSO)”** means untreated or partially treated sewage overflows from a sanitary sewer collection system.
17. **“Severe property damage”** means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
18. **“Total drain”** means the total volume of effluent discharged.
19. **“Upset”** means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

## **B. Permit Specific Definitions**

1. **“303d List”** or **“Section 303d List”** means a list of North Dakota’s water quality-limited waters needing total maximum daily loads or TMDLs developed to comply with section 303d of the Clean Water Act. A copy of the list is available on the state’s web site at:  
[www.ndhealth.gov/wq/sw/A\\_Publications.htm](http://www.ndhealth.gov/wq/sw/A_Publications.htm)
2. **“Energy Dissipation”** means methods employed at pipe outlets to prevent erosion. Examples include, but are not limited to: concrete aprons, riprap, splash pads, and gabions that are designed to prevent erosion.

3. **"Final Stabilization"** means that:
  - a. All soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of 70 percent of the native cover for unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) has been achieved.
  - b. For areas with an average annual rainfall of less than 20 inches only, all soil disturbing activities at the site have been completed and temporary erosion control measures (e.g., degradable rolled erosion control product) are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years and achieve 70 percent vegetative coverage within three years without active maintenance.
  - c. For soil disturbing activities on land used for agricultural purposes, final stabilization may be accomplished by returning the disturbed land to its pre-disturbance agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to "waters of the state" and areas which are not being returned to their pre-disturbance agricultural use must meet the final stabilization criteria in (1) or (2) above.
4. **"Inactive mining" or "inactive oil and gas operations"** means areas, on or beneath lands, which were previously disturbed in activity related to the extraction, removal or recovery of coal, minerals, ores, or oil and gas from their natural deposits and were not otherwise subject to runoff controls or reclamation requirements. The term does not include areas of coal mining activity defined as "active mining area" or reclamation area" in 40 CFR 434.11 or areas which have been reclaimed, cleaned up or sealed under applicable SMCRA or equivalent requirements.
5. **"NDPDES"** means North Dakota Pollutant Discharge Elimination System.
6. **"Normal Wetted Perimeter"** means the area of a conveyance, such as a ditch, channel, or pipe that is in contact with water during flow events that are expected to occur once every year.
7. **"No Exposure"** means that all industrial materials or activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt and/or runoff.
8. **"Non-stormwater discharges"** means discharges other than stormwater. The term includes both process and non-process sources. Process wastewater sources that require a separate NDPDES permit include, but are not limited to industrial processes, domestic facilities and cooling water. Non-stormwater sources that may be addressed in this permit include, but are not limited to: fire-fighting, fire hydrant flushing, potable water line flushing, infrequent building and equipment wash down without detergents, uncontaminated foundation drains, springs, lawn watering and air conditioning condensate.

2. **"Operator"** means the owner, party, person, general contractor, corporation, or other entity that has operational control over a facility. The operator is responsible for ensuring compliance with all conditions of the permit and with development and implementation of the "stormwater pollution prevention plan".
3. **"Significant materials"** includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.
4. **"Significant spills"** includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the Clean Water Act (see 40 CFR 110.10 and CFR 117.21) or Section 102 of CERCLA (see 40 CFR 302.4).
5. **"Stabilized"** means the exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, wood fiber blanket, or other material that prevents erosion from occurring. Grass seeding alone is not stabilization.
6. **"Stormwater"** means stormwater runoff, snow melt runoff, and surface runoff and drainage.
7. **"Stormwater Associated with Industrial Activity"** means stormwater runoff, snow melt runoff, or surface runoff and drainage from industrial activities as defined in 40 CFR ' 122.26(b)(14).
8. **"Stormwater Associated with Industrial Activity"** means stormwater runoff, snow melt runoff, or surface runoff and drainage from industrial activities as defined in 40 CFR ' 122.26(b)(14). Industrial facilities (including industrial facilities that are federally or municipally owned or operated that meet the description of the facilities listed in paragraph (i)-(xi)) include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for the purposes of this subsection:
  - (i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) in paragraph (b)(14) of this section);
  - (ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;
  - (iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw - material, intermediate products, -finished products, byproducts or waste products located on the site of such - operations; (inactive mining operations are mining sites that are not being actively mined, but which have an

identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

- (iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;
- (v) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;
- (vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;
- (vii) Steam electric power generating facilities, including coal handling sites;
- (viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(14) (i)-(vii) or (ix)-(xi) of this section are associated with industrial activity;
- (ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA;
- (x) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;
- (xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25;

**9. "Temporary Erosion Protection"** means methods employed to prevent erosion. Examples of temporary cover include; straw, wood fiber blanket, wood chips, and erosion netting.

**10. "Waters of the state"** means any and all surface waters that are contained in or flow in or through the state of North Dakota as defined in NDCC 61-28-02. This definition includes all water courses, even if they are usually dry.

**11. "You"** means the owner, operator or permittee as appropriate.



## APPENDIX C – RESPONSE TO COMMENTS



Jason Bohrer, President & CEO  
Lignite Energy Council  
PO Box 2277  
Bismarck, ND 58502  
Telephone: (701) 258-7117  
Fax: (701) 258-2755

November 7, 2014

North Dakota Department of Health  
Division of Water Quality  
Environmental Health Section  
Gold Seal Center  
918 E. Divide Avenue  
Bismarck, ND 58501-1947

To Whom It May Concern:

On behalf of the Lignite Energy Council (LEC), this letter is to submit comments regarding the North Dakota Department of Health (NDDOH) draft stormwater permit for mining, extraction or paving material preparation activities (NDR32-0000), based on the October 6, 2014 Public Notice Number ND-2014-002. The LEC is a regional, non-profit organization whose primary mission is to enhance, preserve, and protect the development and use of lignite coal as an affordable and reliable energy source. LEC membership includes the state's surface lignite coal mines that currently operate under approved NPDES permits issued by NDDOH, including stormwater permits, and who will be affected by this proposed permit.

Based on our review of the draft permit, and member discussions with department staff, it appears the NDDOH draft permit reflects the EPA's proposed draft federal stormwater permit (otherwise known as the MSGP, or multi-sector general permit for industrial activity), currently still under agency review (*Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Industrial Activities*, 78 Fed. Reg. 59672 (Sept. 27, 2013). Docket ID No. EPA-HQ-OW-2012-0803). There are significant issues with EPA's proposed federal permit, mostly associated with the unique regulatory nature of mining, especially coal mining, as it relates to jurisdictional oversight for environmental protection. The National Mining Association (NMA), a national trade organization whose membership includes the LEC as well as some individual LEC members, has been working closely with EPA over the past few years to develop the federal permit. In addition to face-to-face meetings with EPA staff in Washington DC, comments directly addressing the proposed EPA permit have been submitted. They are included for your information.

Because EPA's proposed federal stormwater permit remains under agency review, and has not been finalized, we believe it is not appropriate at this time for the NDDOH to promulgate the proposed state stormwater permit as written. It is very likely that the draft federal permit will change before being finalized by EPA. In this case, the state might be left with an approved stormwater permit that is more

Lignite Coal: America's Abundant Energy Resource  
[www.lignite.com](http://www.lignite.com)

stringent than the federal permit, which is contrary to state law. The LEC recommends that the NDDOH issue a state permit that represents a continuation of the existing approved state stormwater permit. Alternatively, the state could wait until the federal permit is finalized, including resolution of all litigation associated with issuance of the federal permit, before writing a new state stormwater permit.

The existing approved state stormwater permit has been successful in controlling stormwater pollution from mine sites in a cost-effective manner. If the NDDOH chooses to continue the existing approved state permit, LEC members are ready to meet with NDDOH staff if there are specific items the agency believes should be changed.

Although this letter addresses the administrative issue of promulgating a state stormwater permit before a federal permit has been finalized, we also want to touch briefly on certain items in the proposed state permit that are not necessary or have no basis for inclusion in any state stormwater permit for mining. This is not an exhaustive list, and there may be others that will need further discussion:

1. Exceedance of “benchmark” values in stormwater samples calls for additional measures to improve best management practices (BMPs) or other stormwater protections. However, these benchmark values do not reflect conditions at North Dakota coal mine sites. For example:
  - a. Total suspended solids (TSS) concentrations greater than 100 mg/l are very common in surface runoff from undisturbed lands – coal mines should not be held liable for reducing TSS levels to below background concentrations;
  - b. There is no indication that iron has been, or is expected to be, an issue or problem associated with stormwater at North Dakota coal mine sites – indeed, historical water sampling indicates total iron remains low; and
  - c. A total aluminum benchmark of 0.75 mg/l has no relationship to any stormwater, waste water, or any other water pollution emanating from or near any coal mine sites in North Dakota – there appears to be no rationale whatsoever for this benchmark, other than its inclusion in the draft federal permit.
2. The new requirement that at least two of the inspections be conducted when a stormwater discharge is occurring. Because of extremely muddy conditions making many remote stormwater sites on North Dakota coal mines inaccessible during a storm event, this is an impractical requirement and could be almost impossible to safely comply with. The existing requirement to inspect stormwater sites as soon as possible after an event has proven adequate to assure environmental protection and timely BMP repair.
3. The new requirement that stormwater sites be inspected following a 0.5” storm event. History has shown that stormwater sites most often do not flow with anything less than a 1” precipitation event, which is the current threshold for inspection. A lower threshold is unnecessary at North Dakota coal mines.
4. The new requirement that stormwater site inspections be conducted quarterly, a change from the existing semiannual requirement. Again, this appears to directly reflect the draft federal stormwater permit. However, it does not reflect conditions at North Dakota coal mines, where the ground can be frozen almost six months of the year. A requirement to inspect stormwater sites in the winter in North Dakota is a costly and unnecessary burden that will provide little, if any, additional benefit from the currently required semiannual inspection frequency.

In summary, the LEC recommends the NDDOH issue a new stormwater permit that is effectively a continuation of the existing approved permit. If changes need to be made, we would be glad to discuss these with you prior to finalization of the permit. Alternatively, the NDDOH could wait until EPA's multi-sector general permit for industrial activities is finalized, including resolution of all litigation, prior to promulgating a new state stormwater permit.

Thank you for this opportunity to provide these comments.

Sincerely,

LIGNITE ENERGY COUNCIL



Jason Bohrer  
President & CEO

Attachments (1)

Department response

The proposed permit was written based on the 2013 EPA draft MSGP. The department made changes to the finalized permit that reflect the 2008 EPA final MSGP. The finalized general permit is based on the current rules and regulations applicable to stormwater discharges associated with industrial activities.

*Item 1. The benchmarks included in the proposed permit reflect those found in the 2008 Multi Sector General Permit (page 75, part 8.H.8, Table 8.H-1). Additionally the department added the following to Appendix 3 of the finalized permit as Part H to better reflect consistency between the traditional general industrial permit (NDR05-0000) and the general permit for mining, extraction or paving material preparation (NDR32-0000). The language will allow for facilities where discharges are consistently below benchmark values to suspend sampling. As stated above benchmark concentrations provide an appropriate level to determine whether a facility's stormwater pollution prevention measures are effective. A pollutant concentration that is above the benchmark value represents a potential water quality concern and the need to improve a facility's SWPP plan.*

“

**Sampling Waiver.**

*A permittee may seek a waiver from all or part of the sampling requirements outlined in Appendix 2 by demonstrating that the conditions listed below have been met. The waiver (or reduction in sampling) may be pursued on both a parameter by parameter and outfall by outfall basis. The waiver request must be submitted to the department for approval. The approval of any waiver will be based on the following conditions:*

- a. *At least four (4) samples must have been collected and analyzed from a discharge point where sampling is required for the parameter(s) being considered. The samples may have been obtained over the course of one year or several years. The results from the four (4) most recent samples must have an average concentration below the benchmark value listed in Appendix 2. A summary of all available monitoring data should be included in the request.*
- b. *The industrial activities at the site (such as materials handling and storage, chemical use, waste disposal practices, erosion controls, and other types of industrial activities) have not changed since the samples were taken in any way that could have an adverse impact on stormwater quality.*
- c. *This waiver is not applicable to sampling for parameters which are required due to effluent limits in the permit.*

“

*Item 2. Part III(A)(1)(e) will now read “ At least one of the routine inspections required in Part III(A) shall be conducted within 48 hours of a precipitation event [emphasis added] resulting in a stormwater discharge. At least one inspection shall be during a 3 month period when no such events occur.” This language will maintain consistency across both industrial stormwater general permits.*

*Item 3. Part III(A)(1)(e) will now read “ At least one of the routine inspections required in Part III(A) shall be conducted within 48 hours of a precipitation event resulting in a stormwater discharge [emphasis added]. At least one inspection shall be during a 3 month period when no such events occur.” This language will better reflect the intent for a wet weather inspection across all facilities covered under this permit.*

*Item 4. The requirement for quarterly inspection reflects the 2008 Multi-Sector General Permit, (page 20, part 4.1.1). Quarterly inspections reflect changes to industrial activities at a facility throughout the year. Quarterly inspections may identify potential pollution issues during fall and winter and allow for time to address them prior to any discharge of stormwater due to snowmelt.*

Additional changes and clarifications made by the department are found below:

-In the finalized permit the word “some” was removed from Part I(A)(2)(b) after reviewing existing facilities that would be included under the permit. Only SIC 3274 would not be included under this permit and the department does not foresee that these facilities will enter the state during the life of this permit. The part now reads:

“Facilities operated to obtain or prepare materials for highway construction activities including concrete or asphalt batch plants, SIC Codes 1611, 2951 and 327;”

-The proposed permit had an expiration date of December 31, 2018. The expiration date of the finalized permit was changed to December 31, 2019 making this a five year permit term as was written in this document in the Proposed Permit Issuance section.

- In the finalized permit, Part I(C)(1), was altered because SWPPP submission is no longer



required as part of the application. The deleted sentence read:

“A copy of the plan must be submitted with the application for certain facilities as described in Part I(D)(3).”

- In the finalized permit, Part I(C)(2), the item was changed to maintain consistency across the NDPDES permits.

The item read:

“Permit coverage will become effective 7 days after you submit a complete application unless otherwise notified by the department (based on the earlier of postmarked date or department date stamp.)”

The item now reads:

“Permit coverage will become effective seven (7) days after you submit a complete application unless otherwise notified by the department (based on department receipt date).”

-In the finalized permit, Part II(C)(4)(e)(5) was added to clarify sediment and erosion control requirements and maintain consistency across NDPDES permits. This part now reads:

“Sediment and erosion controls are expected to withstand and function properly during precipitation events of less than or equal to the 2 year, 24 hour storm event. The release of sediment or other materials due to such storm events should be minimal. The 2 year, 24 hour rainfall event in North Dakota ranges from about 1.9 inches in the west to 2.3 inches in the east.”

-In the finalized permit, Part II(C)(7)(b) was changed to clarify outfall exemption requirements. The exemption based on substantially identical outfalls was intended for sampling only. This part read:

“If you plan to use the substantially identical outfall exemption for the quarterly inspections or the sampling requirements then you must include:”

It now reads:

“If you plan to use the substantially identical outfall exemption for sampling requirements then the exemption shall include:”

-In the finalized permit, Part II(C)(8)(d) was added to reflect language in this fact sheet (page 8) that was not included in the draft permit. Part II(C)(8)(d) of the finalized permit now reads:

“A SWPPP implemented under the previous version of this permit may be continued under this permit. Facilities operating under an existing SWPPP are responsible for incorporating any changes necessitated by the conditions described in this permit. Any such changes must be implemented within 180 days of this permit’s effective date.”

-In the finalized permit, Part II(D)(1), language was added to clarify that only “uncontaminated ground water” can be discharged under the dewatering provision.

-In the finalized permit, the phrase “you must” was removed from Parts II(D)(5), (6), (7), and (8). The removal does not change the requirements of the section.

-In the finalized permit, Part II(E)(1) was added to clarify records retention requirements and maintain consistency across NDPDES permits. This part now reads:

“A copy of the completed and signed Notice of Intent, coverage letter from the department,

SWPPP, inspection records, sampling results, chain of custody documents, discharge monitoring reports, annual reports, and this general permit shall be kept on-site during normal working hours. If the site does not have a reasonable on-site location, then the documents must be retained at a readily available alternative location; preferably with a member of the Stormwater Pollution Prevention Team. If the site is inactive, then the documents may be stored at a local office.”

-In the finalized permit, Part III(B)(2) Monitoring Reports was deleted because the language was duplicated in Part III(D)(2) Discharge Monitoring Reports of the permit.

-In the finalized permit, Part IV was changed to more closely reflect 40 CFR 122. The department does not consider this to be a significant change.

-There were two different definitions for “stormwater associated with industrial activity” in the draft permit. The first definition was removed. The department determined this is not a significant change since the language can be found in the remaining definition. Refer to Part V(B)(14) in the finalized permit. The definition read :

“ **“Stormwater Associated with Industrial Activity”** means stormwater runoff, snow melt runoff, or surface runoff and drainage from industrial activities as defined in 40 CFR ' 122.26(b)(14). ”

-In the finalized permit, the following definitions were deleted as they did not apply to this permit: Salmonid and Sanitary Sewer Overflows (SSO).

-In the finalized permit, Appendix 1- (A)(7) the word “should” was changed to “shall” to better define the requirements of the Appendix.

-In the finalized permit, Appendix 1- (B)(7) and (8) the phrase “replaced” was changed to “replaced, repaired, or supplemented with functional controls.”

-In the finalized permit, Appendix 2, Glass, Clay, Cement Concrete, and Gypsum Products, the phrase “frequency based” was changed to “frequency of sweeping or other measures based.” The phrase “You shall also” was removed from the last paragraph in the section. The removal does not change the requirements of the section.

-In the finalized permit, Appendix 2, Oil and Gas Extraction, Requirements for Dewatering Uncontaminated Stormwater and Melt Water from Oil Well Pads and Secondary Containment Structures, item 1 now reads:

“ The following steps must [emphasis added] be taken to initiate the discharge of uncontaminated stormwater or melt water: ”

This change was made to clarify the discharge requirement.

-In the finalized permit, Appendix 3- (A)(2) was changed to reflect the 2008 MSGP language (page 34, part 6.1.4). This section now reads:

“ For discharges from holding ponds or other impoundments with a 24-hour or greater retention capability, grab samples of the discharge may be obtained at any time. For all other discharges, grab samples shall be taken during the first 30 minutes of the discharge.

If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample may be taken as soon as practicable [emphasis added], provided the permittee submits a description of why the grab sample could not be obtained during the first 30 minutes with the DMR. “

-In the finalized permit, Appendix 3- (E) was changed to more closely reflect 40 CFR 122. The section read:

“ The collection and transportation of all samples shall conform with EPA preservation techniques and holding times. All laboratory tests shall be performed by a certified laboratory in conformance with test procedures pursuant to 40 CFR 136. The method of determining the total amount of water discharged shall provide results within reasonable accuracy. “

The section now reads:

“ The collection and transportation of all samples shall conform with EPA preservation techniques and holding times found in 40 CFR 136. All laboratory tests shall be performed by a North Dakota certified laboratory in conformance with test procedures pursuant to 40 CFR 136, unless other test procedures have been specified in this permit or approved by EPA as an alternate test procedure under 40 CFR 136.5. The method of determining the total amount of water discharged shall provide results within 10 percent of the actual amount. “